

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

HILTON G. JEFFRIES v. STATE OF TENNESSEE

**Direct Appeal from the Circuit Court for Montgomery County
Nos. 23873, 30164, and 38530 John H. Gassaway, III, Judge**

No. M2005-00966-CCA-R3-CD - Filed March 31, 2006

Petitioner, Hilton G. Jeffries, filed a *pro se* pleading captioned as a “Motion to Amend or Correct Judgment” in Case No. 23873 in the Circuit Court of Montgomery County. The pleading was in reference to his conviction in 1987 of aggravated rape of a child less than thirteen years of age. He was sentenced to serve forty years. In his pleading, Petitioner alleges that his constitutional rights were violated when the trial court enhanced his sentence from the minimum sentence of twenty years to forty years. The trial court treated the pleading as a petition for post-conviction relief and summarily dismissed it. Petitioner has filed a timely appeal, and counsel was appointed by the trial court to represent Petitioner on appeal. The State has filed a motion for affirmance pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals. Having thoroughly reviewed the record, we grant the State’s motion and affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed Pursuant to Rule 20 of the Tennessee Court of Criminal Appeals**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Paul Whetstone, Morristown, Tennessee, for the appellant, Hilton G. Jeffries.

Paul G. Summers, Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; John Wesley Carney, Jr., District Attorney General; Arthur F. Bieber, Assistant District Attorney General; and Wade Bobo, Assistant District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

In the opinion of this Court which affirmed Petitioner’s conviction on direct appeal, the sole issue presented was Petitioner’s argument that his sentence of forty years was double enhancement, and therefore excessive. This Court affirmed the judgment of the trial court. *State v. Hilton Glen Jefferies* [sic], No. 88-131-III, 1989 WL 4938 (Tenn. Crim. App., Nashville, January 24, 1989). In that opinion, a panel of this Court recognized that at the time of Petitioner’s offense, Tennessee Code Annotated section 39-2-603 provided that aggravated rape of a child less than thirteen years of age

was subject to imprisonment for life or a period not less than twenty years. Furthermore, at the time of the offense, the legislature had provided in Tennessee Code Annotated section 40-35-107(5), that a conviction for aggravated rape involving child sexual abuse was, by definition, an especially aggravated offense subject to a minimum punishment of forty years as a Range II offender.

In his most-recent pleading, which is the subject of the present appeal, Petitioner argues that he did not receive proper notice that his sentence was subject to enhanced punishment of forty years. Petitioner presently argues that he was entitled to notice of the State's intent to enhance his sentence according to Tennessee Code Annotated section 40-34-202 and according to Rule 32(b) of the Tennessee Rules of Criminal Procedure. The notice provision of Rule 32(b) of the Tennessee Rules of Criminal Procedure refers to capital cases, and the notice requirement of Tennessee Code Annotated section 40-35-202 presently found in that statute, is not applicable to offenses which were, by definition, "especially aggravated offenses" subject to punishment in Range II at the time of commission of Petitioner's offense.

In addition, Petitioner's pleading, if appropriately designated as a petition for post-conviction relief, was not timely filed, and was at least his second petition for post-conviction relief. Both of these facts justify summary dismissal of the pleading if it is considered to be a post-conviction petition. T.C.A. § 40-30-102(a). Even if taken as true, if the petition is taken as a motion to amend or correct an illegal judgment, the proper procedure would be for the Petitioner to file a petition for writ of habeas corpus. *Moody v. State*, 160 S.W.3d 512, 516 (Tenn. 2005) (citing *Stephenson v. Carlton*, 28 S.W.3d 910, 912 (Tenn. 2000)). The pleading does not meet the minimum requirements for filing a petition for writ of habeas corpus, and therefore could not be considered as a petition for writ of habeas corpus. *See* T.C.A. § 29-21-107(a)(2000).

Accordingly, Petitioner is not entitled to relief in this appeal.

CONCLUSION

No error of law requiring reversal of the judgment of the trial court is apparent on the record. The judgment was rendered in a proceeding before the trial court without a jury, was not a determination of guilt, and the evidence in the record does not preponderate against the finding of the trial court. The judgment of the trial court is affirmed pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

THOMAS T. WOODALL, JUDGE